

201703145
PO Marleny Estevez

On April 24, 2017, three officers, including PO Estevez, accompanied a person to an apartment in which she stated she lived. The person with whom she shared the apartment, the woman stated, had changed the locks after they had had an argument. The woman was returning to pick up her remaining belongings and leave. The woman in the apartment refused to answer the door. One of the officers went to another floor, accessed the building's fire escape, went to the apartment, entered through the window, and opened the front door, after which the woman retrieved her belongings.

After the incident, PO Estevez wrote an incident report stating that the woman had given them consent to enter the apartment and retrieve the woman's belongings.

At the CCRB, all of the officers except PO Estevez stated that the woman denied them access and was upset when they entered through the window. They stated they believed they had the authority to enter through the window because the woman had illegally evicted the woman who had lived with her.

PO Estevez instead testified that the woman had given her consent for them to enter the apartment.

The CCRB found that while the entry was not lawful, the officer had misunderstood the law and therefore only recommended formal training. It found, however, that evidence showed PO Estevez had made a false official statement about a material matter.

The NYPD gave formal instructions to the officer who entered the apartment and no discipline to PO Estevez.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #10	CCRB Case #: 201703145	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/24/2017 2:11 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 10/24/2018	EO SOL 10/24/2018	
Date/Time CV Reported Mon, 04/24/2017 2:39 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/24/2017 2:39 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Andy Roque	23783	§ 87(2)(b)	046 PCT
2. POF Marleny Estevez	22904	§ 87(2)(b)	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ronnie Garcia	17245	§ 87(2)(b)	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Andy Roque	Abuse of Authority: Police Officer Andy Roque entered § 87(2)(b) [REDACTED] in the Bronx.	A . § 87(2)(g) [REDACTED]
B . POM Andy Roque	Abuse of Authority: Police Officer Andy Roque threatened to arrest § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . POF Marleny Estevez	Other: There is evidence suggesting Police Officer Marleny Estevez provided a false official statement in violation of PG 203-08.	C . § 87(2)(g) [REDACTED]

Case Summary

On April 24, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone.

Prior to the incident, § 87(2)(b) had lived at § 87(2)(b) in the Bronx along with her son, § 87(2)(b) and her son's girlfriend, § 87(2)(b). Several days before the incident, § 87(2)(b) had gotten into a dispute with § 87(2)(b) and § 87(2)(b) prompting them to move out of the apartment. After they left, § 87(2)(b) had the locks in the apartment changed to prevent them from re-entering the apartment. § 87(2)(b) had left several belongings in the apartment when she departed.

At approximately 2:11 p.m. on April 24, 2017, § 87(2)(b) returned to the apartment and attempted to retrieve her property. PO Andy Roque, PO Marleny Estevez and PO Ronnie Garcia of the 46th Precinct were with her at the time. § 87(2)(b) and the officers knocked on § 87(2)(b)'s door, but § 87(2)(b) ignored them and made no response. A few minutes later, PO Roque climbed onto the building's fire escape and entered the apartment through an open window (**Allegation A**). Seeing § 87(2)(b) inside, PO Roque asked, "Didn't you hear us knocking on your door? I'll lock you up for not opening your door" (**Allegation B**). PO Roque then opened the apartment's front door, admitting § 87(2)(b). PO Estevez and PO Garcia also entered at that time. After § 87(2)(b) retrieved her belongings, she and the officers left the apartment. § 87(2)(b) was not arrested or issued a summons.

The CCRB found evidence that PO Estevez provided false official statements regarding this incident (**Allegation C**). On 7/28/17, IAB log # 2017-28656 was generated via CCRB case number 201705840 to address the CCRB's finding.

No video was found for this incident.

An attorney was consulted regarding allegations in this case.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation, § 87(2)(b)
- As of July 18, 2017, § 87(2)(b) has not filed a Notice of Claim with the NYC Comptroller's Office in regards to this complaint.

- § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- § 87(2)(b)
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- PO Roque has been a member of the service for nine years and there are no substantiated CCRB allegations against him. He has been the subject of two previous allegations in two cases. These are the first entry and threat of arrest allegations made against him.
- PO Estevez has been a member of the service for nine months. This is the first CCRB allegation made against her.

Potential Issues

- § 87(2)(b) stated that § 87(2)(b) had formerly resided with her at § 87(2)(b) but that she moved out of the apartment shortly before the incident along with § 87(2)(b) and § 87(2)(b) were living together at the time. § 87(2)(b) did not know current contact information for § 87(2)(b) or § 87(2)(b) but stated that they may have moved out of state. Reviews of the Lexis Nexis and CLEAR databases returned no results for § 87(2)(b) or § 87(2)(b). A review of the CTS database found no results for § 87(2)(b). A previous CCRB complaint found involving § 87(2)(b) only listed his address as § 87(2)(b). No current contact information was found for him. During PO Roque's CCRB interview on June 22, 2017, he provided a handwritten copy of the Domestic Incident Report prepared by PO Estevez (See Board Review #03: Domestic Incident Report). The report listed § 87(2)(b)'s address as § 87(2)(b). It also provided a telephone number for her. Between June 26, 2017 and July 13, 2017, seven calls were made to this number. Some of these calls were made after 5:00 p.m. or on the weekend. Voicemails were left on each call. Lexis Nexis and CLEAR searches returned no addresses associated with this telephone number. To date, § 87(2)(b) has not responded to these contact attempts.

Findings and Recommendations

Allegations Not Pleaded

- **Abuse of Authority – Premises Entered And Searched:** It is undisputed that after PO Roque entered the apartment through the window, he opened the front door. PO Garcia and PO Estevez subsequently entered the apartment through the front door. At the time of the incident, both PO Garcia and PO Estevez had been members of the service for less than a year. The roll call indicates that PO Roque had been assigned as their training officer (See Board Review #04: Roll Call). Since PO Garcia and PO Estevez were operating under PO Roque's supervision and entered the apartment after PO Roque opened the door to admit them, entry allegations have not been pleaded in regards.

Allegation A –Abuse of Authority: Police Officer Andy Roque entered § 87(2)(b) in the Bronx.

An attorney was consulted in regards to this allegation.

It is undisputed that § 87(2)(b) called the police in order to obtain their assistance in retrieving her belongings from the apartment. When the police knocked on § 87(2)(b)'s door, she ignored them and made no response. PO Roque then climbed out onto the building's fire escape and entered § 87(2)(b)'s apartment through an open window. PO Roque then opened the apartment's front door, allowing PO Estevez and PO Garcia to enter as well.

§ 87(2)(b) called the CCRB while the officers were still inside of her apartment on April 24, 2017. She then called the CCRB again shortly after the incident to report the incident. She provided a telephone statement on May 2, 2017. § 87(2)(b) was then interviewed at § 87(2)(b) on May 11, 2017 (See Board Review #05-08: § 87(2)(b)'s Statements). § 87(2)(g). § 87(2)(b) alleged that § 87(2)(b) and § 87(2)(b) had moved out of the apartment several days before the incident after § 87(2)(b) and § 87(2)(b) had a dispute. Fearing that § 87(2)(b) would return to the apartment and harm her, § 87(2)(b) had the locks on the apartment changed. On April 24, 2017, § 87(2)(b) returned to the apartment in order to retrieve several belongings that she had left inside. § 87(2)(b) refused to open the door for her. § 87(2)(b) then called the police to come to the location. PO Roque, PO Garcia and PO Estevez responded. When the officers knocked on the door, § 87(2)(b) ignored them and made no response. § 87(2)(b) heard the officers through the door tell § 87(2)(b) that they were going to enter the apartment through a window. A few minutes later, PO Roque climbed into an open window via the building's fire escape and entered the apartment. Once inside, he opened the apartment's front door to admit PO Garcia, PO Estevez and § 87(2)(b). § 87(2)(b) told the officers that they were not allowed to be in her apartment, but they ignored her. The officers watched as § 87(2)(b) gathered her belongings. After she finished gathering them, she and the officers left the apartment. § 87(2)(b) was not issued any summonses.

PO Roque was interviewed at the CCRB on June 22, 2017 (See Board Review #09: PO Roque's Statement). He stated that when he arrived outside of the apartment, § 87(2)(b) told him that she still lived in the apartment, but had been locked out by § 87(2)(b). He did not recall if § 87(2)(b) had keys to the apartment or if the locks had been changed at the apartment. § 87(2)(b) stated that § 87(2)(b) had refused to answer when she knocked on the door. She explained that she knew § 87(2)(b) was inside because § 87(2)(b) has mobility issues and cannot leave the apartment. PO Roque and the other officers also knocked on the door, but received no response. PO Roque asked § 87(2)(b) for her permission to find another way into the apartment. § 87(2)(b) consented. PO Roque then went upstairs to an unknown apartment on the building's fifth floor. There, an unidentified resident gave him access to the building's fire escape. PO Roque climbed down to the fourth floor and found that one of the apartment's windows was open. PO Roque climbed back up the fire escape and spoke to § 87(2)(b) again. He asked her for permission to climb into the apartment through the window. § 87(2)(b) again consented. PO Roque returned to the fifth floor, crawled back down the fire escape, and entered the apartment through the window. Inside, § 87(2)(b) began to shout at him. She told him that she was going to file a complaint against him. PO Roque then opened the front door and admitted PO Garcia, PO Estevez and § 87(2)(b). PO Roque did so in order to give § 87(2)(b) access to the apartment. He made no mention of entering the apartment in order to check on § 87(2)(b)'s status. PO Roque did not consider § 87(2)(b)'s refusal to admit § 87(2)(b) into the apartment to be an illegal eviction, because he was not aware of § 87(2)(b) changing the

locks or cutting off utilities in the apartment. He did state, however, that officers are permitted to enter residences where illegal evictions have been conducted in order to let the evicted tenants back inside.

PO Estevez and PO Garcia were interviewed at the CCRB on June 23, 2017 and June 26, 2017, respectively (See Board Review #10: MOS Statements). Both officers stated that § 87(2)(b) told the officers that she lived in the apartment, but that § 87(2)(b) had evicted her by changing the locks. § 87(2)(b) also informed the officers that § 87(2)(b) had mobility issues. PO Garcia further alleged that § 87(2)(b) told them that § 87(2)(b) had a history of psychiatric issues, including schizophrenia and dementia. Both officers stated that § 87(2)(b) did not answer when they knocked on the door. PO Estevez stated that § 87(2)(b) suggested to PO Roque that he could climb in through the window on the fire escape. PO Garcia stated that PO Roque instead suggested this to § 87(2)(b). Neither officer accompanied PO Roque upstairs when he gained access to the fire escape. Both officers said that PO Roque only went upstairs once. PO Estevez and PO Garcia next saw PO Roque when he opened the apartment's front door. The officers then entered with § 87(2)(b). Both officers characterized § 87(2)(b)'s actions during the incident as an illegal eviction. They also stated that the police are not empowered to enter a residence to resolve an illegal eviction. When asked why PO Roque entered the apartment, both officers explained that he did so because § 87(2)(b) had indicated that § 87(2)(b) suffered from mobility issues. Since § 87(2)(b) had not answered when they knocked, PO Roque wanted to check that she was not in distress inside of the apartment. When PO Roque opened the door, PO Garcia asked § 87(2)(b) if she was alright. § 87(2)(b) responded by telling the officers that they had no right to be in her apartment. PO Estevez did not recall any officers asking § 87(2)(b) if she needed medical attention.

PO Estevez prepared a Domestic Incident Report regarding the incident. The narrative of the incident indicates that "P2" (identified in the report as § 87(2)(b)) locked "P1" (identified in the report as § 87(2)(b)) out of the apartment and refused to let her back inside. The report also included a written statement, prepared by § 87(2)(b) stating that she had been kicked out of the apartment by § 87(2)(b) and refused re-entry (See Board Review #03: Domestic Incident Report).

NYPD Patrol Guide procedure 214-12 defines an unlawful eviction as an effort by the owner of a property to deny a tenant access to a property by unlawful means, including changing the locks at the property. When an officer is made aware of an unlawful eviction being conducted, they are directed to issue the owner a summons for conducting an illegal eviction, or arrest the owner should they refuse to grant access to the property to the tenant. They are not directed to take any direct actions to grant the tenant re-entry onto the property (See Board Review #12: Legal Reference).

Under the emergency doctrine, an officer may conduct a warrantless search of a residence in order to assist persons whom they reasonably believe to be in distress. In order for this exception to apply, two elements must be present. First, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. Second, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. A third element, which states the

search must not be primarily motivated by intent to arrest and seize evidence, has been used in the past. There is conflicting case law regarding this third element, and its current validity has not been firmly established. People v. Loucks, 125 A.D.3d 887 (App. Term, 2nd Dept., 2015) (See Board Review #13: Legal Reference).

§ 87(2)(g)

While PO Estevez stated that § 87(2)(b) eventually consented to allow herself, PO Garcia and § 87(2)(b) in, this consent was allegedly offered after PO Roque entered the apartment. § 87(2)(b)'s offer of consent was also contradicted by § 87(2)(b) PO Roque and PO Garcia. § 87(2)(g)

§ 87(2)(g)

it is undisputed that the situation that the officers were confronted with was an illegal eviction. Such disputes are handled by housing court, rather than by the NYPD. § 87(2)(g)

PO Garcia and PO Estevez provided an alternative justification for the entry. They both confirmed that they believed that § 87(2)(b) had illegally evicted § 87(2)(b). They further stated that this alone did not provide them with a reason to enter the apartment. Instead, PO Garcia and PO Estevez stated that PO Roque entered the apartment out of concern for § 87(2)(b)'s well-being. These two officers, citing § 87(2)(b)'s claim that § 87(2)(b) had mobility issues and the fact that § 87(2)(b) was not answering the door, suspected that § 87(2)(b) might have been somehow incapacitated inside of the apartment. PO Roque thus entered the apartment in order to check on § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

Allegation B –Abuse of Authority: Police Officer Andy Roque threatened to arrest § 87(2)(b)

§ 87(2)(b) denied that § 87(2)(b) lived in the apartment at the time of the incident. She stated that after PO Roque entered the apartment, but before he opened the front door, PO Roque stated, “Didn’t you hear us knocking on your door? I’ll lock you up for not opening your door.” § 87(2)(b) made no mention of PO Roque telling her that she might be arrested for any other reason.

PO Roque stated that § 87(2)(b) told the officers that she still lived at the apartment at the time of the incident. He did not recall asking § 87(2)(b) why she had refused to open the front door after he entered the apartment. He denied telling her that she would be arrested for refusing to open the door. PO Roque did explain to § 87(2)(b) that if she wanted to remove § 87(2)(b) from the apartment, then she would have to go to housing court. He also explained to her that she cannot deny § 87(2)(b) access to the apartment by changing the locks, and that if she were to do so, she could be arrested for conducting an illegal eviction.

PO Garcia and PO Estevez also stated that § 87(2)(b) claimed to live in the apartment at the time of the incident. They were not inside of the apartment at the time of PO Roque's alleged threat. PO Garcia denied that PO Roque or any other officer told § 87(2)(b) that she would be placed under arrest for any reason after PO Roque opened the front door. PO Estevez stated that PO Roque informed § 87(2)(b) after he opened the front door that she could be issued a summons for illegally evicting § 87(2)(b). Both PO Garcia and PO Estevez noted that § 87(2)(b) by changing the locks and refusing § 87(2)(b) entry into the apartment, had committed an illegal eviction. They explained that § 87(2)(b) was not issued a summons for conducting an illegal eviction because they felt that the situation had been resolved when § 87(2)(b) retrieved her belongings and left the apartment.

§ 87(2)(g)

PO Roque and PO Estevez alleged that PO Roque told § 87(2)(b) that she could be arrested for carrying out an illegal eviction. § 87(2)(g)

§ 87(2)(g)

Allegation C –Other: There is evidence suggesting Police Officer Marleny Estevez provided a false official statement in violation of PG 203-08.

The CCRB found evidence suggesting that PO Estevez provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case #201705840. The evidence is as follows:

On April 24, 2017, PO Estevez prepared a handwritten Domestic Incident Report regarding this incident. The report listed § 87(2)(b) as the victim and was referred to as “P1” in the narrative. § 87(2)(b) was listed as the suspect and was referred to as “P2” in the narrative. Within the narrative, PO Estevez wrote, “P2 allowed P1 into the apartment eventually to allow P1 to remove assorted items from the apartment” (See Board Review #03: Domestic Incident Report).

During her sworn statement on June 23, 2017, PO Estevez stated that after PO Roque had gained access to § 87(2)(b)'s apartment through an open window, he opened the apartment's front door. Once it was opened, PO Estevez, PO Garcia and § 87(2)(b) stepped to the threshold of the door, but did not enter the apartment. Both officers then told § 87(2)(b) that they wished to escort § 87(2)(b) into the apartment so that § 87(2)(b) could retrieve her belongings. § 87(2)(b) replied, “Go right in.” The officers then walked into the apartment with § 87(2)(b). PO Estevez was also shown a copy of the handwritten Domestic Incident Report. After reviewing the report, she confirmed that she had prepared the report.

During their respective CCRB interviews, § 87(2)(b), PO Roque and PO Garcia all denied that § 87(2)(b) gave consent for § 87(2)(b) or any of the officers to enter the apartment. § 87(2)(b) stated that she told the officers directly that they had no right to be inside of her apartment. PO Roque stated that § 87(2)(b) was upset by his entry, and told him shortly after he entered the apartment that she was going to file a complaint against him for entering the apartment. PO Garcia explicitly denied that § 87(2)(b) gave consent for anybody to enter the apartment. Both PO Roque and PO Garcia were shown the narrative of the Domestic Incident Report, which stated that § 87(2)(b) had allowed § 87(2)(b) into the apartment. After reviewing the narrative, both officers denied that § 87(2)(b) gave consent for anybody to enter the apartment at any time.

NYPD Patrol Guide procedure 203-08 states that an officer is prohibited from making a false official statement, and that an officer found to have made one will be subject to disciplinary action (See Board Review #14: Legal Reference).

§ 87(2)(g)

Squad:

Investigator:

Signature

Print

Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date